

I've posted about how the Anthropocene will see [major changes in how humans affect our planet](#), and how those changes will have [major impacts on human society](#), triggering [substantially larger interventions](#) by the legal system in a wide range of individual behavior. In this post, I want to spin out some of the implications of those dynamics for private law in the United States. Here I will cover two examples: tort law and property law.

The changes in private law are driven by the three characteristics of the interaction of the Anthropocene with the legal system that I have developed in my prior posts: a rapid increase in the number and scope of ways in which human activities impact the planet; an increasing share of those impacts being driven by the aggregation of millions and billions of individual activities; and the inevitable need for a substantial role for state intervention to address these challenges, no matter the specific policy tools that are relied upon.

Tort law is an area that has already seen a fair amount of litigation as a range of private parties and government entities seek to use it to force government intervention in the context of climate change. Thus, the caselaw already shows some of the tensions and changes that may arise in the law. In general, tort law has a wide range of doctrines that essentially immunize small-scale human activities from legal liability – whether because of concerns over state intervention in the lives of individuals, a belief that these small-scale activities really don't matter very much, or because of the challenges of addressing these activities through the courts. For instance, proximate cause is a doctrine that prevents liability from being imposed for activities whose causal connections are too remote from a plaintiff's claimed injury. But many of the harms in the Anthropocene are the result of millions or billions of human activities that collectively affect global systems such as the climate and oceans, and that in turn impacts millions or billions of people. Proximate cause likely poses a serious barrier to many efforts to use tort doctrine to address these issues – unless the concept is either abandoned or reconceived significantly. Alternatively, tort law may become increasingly irrelevant for the legal and management problems that will dominate in the Anthropocene.

The rapid change in the nature and scale of human impacts on the planet in the Anthropocene will pose serious challenges for property law. Property law has traditionally emphasized stability in assigning and protecting property rights, for a range of very good reasons (such as encouraging reliance by property owners so that they will develop and use their property). But if we regularly identify new human impacts in the Anthropocene or existing human impacts increase rapidly, we will need to regularly update our legal responses (whether regulatory, taxation, or otherwise) in response. That will place pressure on property rules (such as the Takings Clause of the Fifth Amendment) that attempt to limit the scope of changes in property rights.

One can imagine a range of other ways in which the general trends of the Anthropocene may create additional doctrinal changes in these areas of private law, and other areas of private law as well. (I develop some more of these doctrine changes in the article.)

Next post I will turn to public law.

(A link to my law review article that is the basis for these posts is [here](#).)